

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF4110
)	EEOC NO.: 21BA91977
DONNA M. GAITHER)	ALS NO.: 10-0063
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Donna M. Gaither's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2008CF4110; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. The Petitioner filed a charge of discrimination with the Respondent on September 24, 2008, and subsequently perfected the charge on February 2, 2009. The Petitioner alleged that on July 18, 2008, Sam's West, Inc. ("Employer") gave her a lower salary increase because of her race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On December 23, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On January 19, 2010, the Petitioner filed this timely Request.
2. The Petitioner was employed as a Photo Lab Technician. The Petitioner was an hourly employee.
3. The Employer conducted yearly evaluations on its hourly employees. The score that the employee received would be used to determine the amount of the employee's pay raise, if any. Hourly employees who scored 16 points were given a \$ 0.60 per hour pay increase. Hourly employees scoring between 13 and 15 points earned a \$ 0.40 per hour pay raise. Hourly employees who scored 12 points or lower did not receive a pay raise.

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

4. On her July 24, 2008, evaluation the Petitioner received a score of 14 points, which resulted in a \$ 0.40 per hour pay increase.
5. On February 11, 2008, and September 20, 2008, two (2) similarly situated non-Black hourly employees who had scored within the 13 to 15 point range on their evaluations received \$ 0.40 per hour pay increases.
6. In her charge, the Petitioner alleged that she was given a \$ 0.40 pay increase as opposed to a \$ 0.60 pay increase because of her race, Black. The Petitioner alleged a non-Black employee had received a \$ 0.60 pay increase even though their job performance and duties were comparable.
7. The Employer stated that the Petitioner was given a lower salary increase than the alleged non-Black comparable employee because the non-Black employee had scored 16 points on her evaluation, which entitled the non-Black employee to a \$ 0.60 per hour pay increase.
8. In her Request, the Petitioner argues the Respondent was misled by the Employer. The Petitioner contends that the non-Black employee who received the \$0.60 per hour pay increase had attendance issues that should have earned her a lower score on her evaluation, and thus a lesser pay raise. The Petitioner also argues that her manager was racially biased.
9. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues similarly-situated non-Black employees received pay increases in the same amount as the Petitioner. Further, the Respondent argues there was no evidence the Employer's articulated non-discriminatory reason for its actions was a pretext for discrimination.

Conclusion

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

First, the evidence is insufficient to show the existence of a *prima facie* case of discrimination. Generally, in order to establish a *prima facie* case of discrimination, the Petitioner must show: (1) that she falls within a protected class; (2) that she was performing her job satisfactorily; (3) that she was subjected to an adverse action; and (4) that the Employer treated similarly situated employee outside

the Petitioners protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

In this instance, there is no evidence to substantiate the fourth element of the Petitioner's *prima facie* case because there was no evidence that the Employer had treated similarly situated non-Black employees more favorably than the Petitioner. In fact, the Petitioner was treated the same as at least two (2) other non-Black employees who had also scored within the 13 to 15 point range on their evaluations.

In her Request, the Petitioner does not offer any additional evidence from which a reasonable mind could conclude that the amount of her pay raise was premised on her race, rather than based on the score she had received on her evaluation.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and, Sam's West, Inc., as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 25th day of August 2010

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen